OCA Log

OCA 87-0420
9 February 1987

NOTE FOR: The Acting Director

THROUGH: Dave Gries

FROM: [redacted] STAT

SUBJECT: Stokes' Bill Amending Oversight Act

Attached is the bill introduced last week by Stokes along with his accompanying statement on the House floor and that of co-sponsor Eddie Boland. With the exception of Charlie Wilson, all of the Democratic Members of HPSCI also co-sponsored the measure.

The key features of the bill are as follows:

- All Findings must be in writing, with copies going to the oversight committees along with the VP, Sec/State, Sec/Defense and DCI.

- Prior notice of all Findings must be given to the committees except when there is an "unusual degree of sensitivity", in which case prior notice may be given to the "gang of eight".

- Prior notice to Congress can be deferred "only in extraordinary circumstances affecting the vital interests of the U.S., and only when time is of the essence." In any event, notice can be deferred only up to 48 hours after the Finding has been signed.

So far no corresponding bill has been introduced in the Senate. However, this is likely to happen soon.

Attachment
as stated

STAT

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D/OCA [redacted] (9 Feb 87)

contract is shipped offshore. Taxes are not only lost, but the whole amount moves out of the country as a debt that we owe to other nations in the balance of payments.

Cheaper to go offshore? For whom? I would like to know what bookkeepers in our Congress and administration add so poorly.

I welcome the concern of my fellow Congressmen over the loss of business to our military contractors. When this whole cycle began, it seemed that this country was bowing under the pressure of foreign governments, saying that if we did not buy more weaponry from them, they would stop purchasing from us.

Well, we have brought more weaponry from them and they are now buying less from us. So much for bending to intimidation: and their sales position has been strengthened by the infusion of state-of-the-art U.S. technology which is being passed along in some of these contract awards.

Mr. Speaker, I hope I do not sound like some naive person when I express utter shock and amazement that we seem to have bought the London Bridge and the Eiffel Tower, and every pea under the shell that these hungry foreign nations are hawking.

They need manufacturing and manufacturing jobs—well, so do we. Neither I, nor anyone in this body, was elected to protect the interests of Europe and European lawmakers, or European or any workers abroad. We are elected to protect the interests of America and Americans.

Every dollar of taxpayers' money should be plowed back into this country. With a shrinking industrial base, the guarantee of defense money to the remaining manufacturing companies will at least keep a remnant of industry in this country which maintains skills and technology needed for any meaningful defense.

I believe, to remain a leading nation in the world, it will take more than a remnant of industry. It will take an expanding industrial base, but that will take great effort and will on the part of everyone to turn the tides that are tearing at our strength. I hope with all my heart that we can achieve this turnaround. However, in the interim, to throw away the lead we have in weapons sales and technology is more than folly, it is madness.

I am glad so many Congressmen are now angry over these sales. I hope they are angry enough to do something about it. I have been fighting many bureaucrats over provisions of law, of existing law which they are flaunting in regard to shipping on American-flag ships. I am always dismayed at the attitude they display toward American law; and, in instances of which I have been aware, the law has been clear, and all too often disobeyed.

Let us make it clear, ladies and gentlemen, where we stand. Once and for all, and I hope that stand is for America. For American products and companies and jobs. For America's revitalization. I believe it is worth the struggle and the effort; and it should be seen as the job of every American today.

□ 1640

THE INTELLIGENCE OVERSIGHT AMENDMENTS OF 1987

The SPEAKER pro tempore (Mr. GRAY of Illinois). Under a previous order of the House, the gentleman from Ohio [Mr. STOKES] is recognized for 15 minutes.

Mr. STOKES. Mr. Speaker, the Iran-Contra controversy has raised some very serious questions concerning the ability of the Intelligence Committee to effectively perform its important oversight function. I say this not to criticize the committee, of which I have been a member for 4 years, and will chair during the 100th Congress, but to emphasize the obvious: No matter how vigorously it pursues its mission, a congressional committee's oversight efforts are largely dependent on the willingness of the executive branch to provide information.

When the executive branch treats the oversight process as a legitimate and important function of representative government, and cooperates accordingly, both the oversight process and the programs overseen usually function at their best.

When the executive branch treats congressional oversight as an irritant to be avoided or overcome, the result is quite often a policy or program failure. Occasionally, such failures are of such magnitude as to directly affect the national interest.

Clearly, this has been the case with regard to the so-called Iran initiative. The intent to evade congressional oversight is clear; the disastrous result is equally clear. It has come in the one area of secret governmental activity—covert action—where effective congressional oversight is imperative, and where congressional access to information must be unfettered. If the Intelligence Committees are not informed of covert actions, then no one in Congress is informed and no oversight is performed. If the Intelligence Committees are not permitted to offer sound advice and constructive criticism before an action is initiated, then rarely will any such advice or criticism be heard from anyone who does not have a direct operational or policy connection to the particular covert action contemplated.

In my opinion, this outsider's look is one of the more important functions of the Intelligence Oversight Committees. While we must endeavor to avoid or discover Intelligence Agency abuses, to control the monetary cost of intelligence activities, and to influence major policy decisions affecting the long-term conduct of intelligence activities, it is just as important, to both the Congress and the intelligence community, to be able to sit back in a detached manner, listen to an intelligence briefing, and suggest that the proposed action is a bad plan. It is much easier to perceive the inherent folly of a complicated plan if you did not have a hand in its formulation or execution and your job does not depend on its success.

So, there are reasons other than the curiosity for oversight committees to seek to know as much information as possible. The Iran-Contra affair is instructive. Surely, if the Intelligence Committee had been provided prior notice of the Iran arms sales when it should have been, at least one among us might have asked some pertinent questions; some of us might even have opposed it; and some of us who opposed it might even have proferred reasoned and persuasive arguments as to why the proposal would not work. Indeed, since the Intelligence Committee possesses no veto authority over covert actions, members of the committee have, on occasion, written to the President directly to voice opposition to a proposed covert action. Had we been afforded the opportunity to do so this time, at the program's inception or later, the President would have had a better understanding of the risks involved and of the clear aversion of the Congress and the American people to what appears to be an arms-for-hostages deal.

At one time, even quite recently, in this relatively new intelligence oversight process, the intelligence community, and the CIA in particular, seemed to recognize the value of congressional oversight. At one time, the intelligence community, and the CIA in particular, seemed to recognize the need to codify the oversight process and joined the members of the intelligence committees to enact the Oversight Act of 1980. Also, at one time, the intelligence community, and the CIA in particular, considered that statute as a binding promise to keep the intelligence committees fully informed.

Apparently, and regrettably, this is no longer true. That bond of mutual respect and trust between the committees and the CIA, which EDDIE BOLAND, Ken Robinson, Senator INOUYE, Senator Bayh, Senator Goldwater, and others strove so hard and so successfully to establish, has been broken. It has been replaced of late by a demonstration of arrogance that permits high-ranking Government officials to look for ways to avoid the law rather than execute it, and to reason that a statute designed to insure prior notice authorized no notice at all for 10 months.

Where the Congress had agreed to some minimal ambiguity so as to avoid confrontation, this administration now sees an acceptance by the Congress of a constitutional right to withhold in-

formation. Where some in the Congress had recognized the possibility of a rare circumstance in which Presidential action was demanded before notice could be given, this administration perceives congressional recognition that some executive branch actions are too sensitive to share with the intelligence committees. Where once intelligence professionals were eager both to perform their own oversight as well as cooperate with the Congress, this administration now permits the Nation's most sensitive intelligence operations to be carried out by individuals who deem the Congress more of a threat than hostile governments or terrorists.

Mr. Speaker, it is my fervent hope that we now have hit rock botton in this matter and that the state of affairs I have described will end as quickly as it began. Then the intelligence committees and the executive branch can begin to reestablish an atmosphere in which the committees, the Congress, and the American people can once again feel confident that certain agencies are indeed to be trusted.

This time, however, the Congress must be perfectly clear in setting out the ground rules and must exercise its full constitutional powers. Events have demonstrated that to rely, as we all did, on the assurance that Government officials would always act in a spirit of good will when interpreting statutes worded vaguely at the insistence of other Government officials, is not in the best interest of the oversight process. The actions of the President, the Director of Central Intelligence, and the latter's general counsel in interpreting the prior notice provision of the Oversight Act of 1980 require us, for their benefit as well as ours, to bring clarity to the provision.

Therefore, Mr. Speaker, today, Mr. BOLAND, Mr. BEILENSON, Mr. MCCURDY, Mr. DANIEL, Mr. BROWN of California, Mr. DWYER, Mrs. KENNELLY, Mr. KASTENMEIER, Mr. MCHUGH, and I have joined to introduce the Intelligence Oversight Amendments of 1987.

The bill amends the National Security Act of 1947 and section 662 of the Foreign Assistance Act of 1961—the Hughes-Ryan amendment—in order to implement the intent of those who drafted the Oversight Act of 1980 and to insure that the President, whoever he or she may be, receives sound advice from within both the Congress and the executive branch before undertaking covert actions.

The bill would require that all Presidential findings be in writing, and that the written finding be provided to the intelligence committees, the statutory members of the National Security Council, and the Director of Central Intelligence prior to the initiation of a covert action.

The bill would also make clear that prior notice to Congress of all covert actions must be given, except in extraordinary circumstances affecting the vital interests of the United States where time is of the essence. In such cases, and only in such cases, notice could be deferred for not more than 48 hours.

With these amendments, the scheme for covert action reporting will be quite clear: First, in almost all cases, prior notice must be given to the intelligence committees; second, in rare cases, where the President believes there is an unusual degree of sensitivity, prior notice must be given, but it may be given to the leadership group set out in section 501; and third, in even rarer cases, where the President must react with speed because of an immediate threat to our national security, notice may be deferred for a maximum of 48 hours.

Never again, Mr. Speaker, must we hear that an activity of the U.S. Government is so sensitive that knowledge of it must be withheld from the U.S. Congress.

Mr. Speaker, I am pleased now to yield to the distinguished former chairman of the Permanent Select Committee on Intelligence, the gentleman from Massachusetts [Mr. BOLAND] under whose chairmanship the House Intelligence Committee attained prominence.

(Mr. BOLAND asked and was given permission to revise and extend his remarks.)

Mr. BOLAND. Mr. Speaker, I appreciate very deeply the remarks of the distinguished chairman of the House Permanent Select Committee on Intelligence with respect to my chairmanship during the 7 years that I was with the select committee.

Mr. BOLAND. Mr. Speaker, by the time the last investigative report is issued on the Iran-Contra affair, I expect that the national list of lessons to be learned from this episode will be quite extensive indeed.

I also expect that Congress may deem it necessary to address, through legislation, certain aspects of this matter, in an attempt to ensure that whatever mistakes were made are not repeated in the future.

We are obviously some months away from the kind of final accounting which can form the basis for such legislation.

However, in one particularly sensitive area—the form and timing of congressional notification of covert intelligence actions—it is already quite clear that there exists a serious and fundamental disagreement between the executive branch and the Congress over the requirements of existing law.

The potential for additional damage to our foreign policy interests, and the reputation of our intelligence agencies, through the perpetuation of this disagreement is so great, that I believe that it must be legislatively resolved as quickly as possible.

For that reason, I am pleased to join Chairman LOU STOKES of the House Permanent Select Committee on Intelligence, and Congressmen MCHUGH and BEILENSON, in the introduction of the Intelligence Oversight Amendments of 1987.

I can well recall that when the House Intelligence Committee was created nearly 10 years ago there were no illusions about the fact that to effectively do its job of oversight it would have to depend to a great extent on the candor of the intelligence agencies.

To those who might consider that a contradiction in terms, I would respond, that the hard work of Intelligence Committee members on both sides of the aisle, and in both Houses of the Congress, won for us a recognition, in the executive branch, that intelligence oversight was something to be valued, and not feared.

Or at least I thought it had.

The fact of the matter is, as Mr. STOKES has so well stated, that congressional oversight of intelligence activities is the only independent assessment of them, that is going to be made.

It seems to be beyond question, that intelligence initiatives, which are well-conceived, and based on sound policy objectives could only benefit from this type of review.

The tendering of advice and suggestions, or the noting of reservations, by outside parties ought, it seems to me, to be welcomed by decisionmakers interested in truly measuring the risks and the potential gains of sensitive activities.

This is the role the Intelligence Committees are supposed to play, but it simply cannot be done if they are not fully informed about intelligence activities, in time, to provide meaningful oversight.

In 1980, during the consideration of the Intelligence Oversight Act of that year, the House and Senate Intelligence Committees, in conjunction with representatives of the administration then in office, grappled with the most difficult issue related to oversight—the prior reporting of covert operations.

After a great deal of give and take, during which time both the Congress and the executive branch understandably sought to preserve their constitutional authorities, we established, in statute, a procedure that recognized as a matter of practice that significant intelligence activities, including covert opertions, had to be reported to the Intelligence Committees prior to initiation.

While prior notice was clearly to be the norm, we also recognized that there might be an extremely limited number of occasions, in which the President might determine, that notice of a covert operation could not be made until after it had begun.

We determined that those instances would be accommodated without doing violence to the general principles of congressional prenotification if the

President understood that notice could be deferred, not eliminated.

We did not define, what we considered to be a reasonable time, for informing the committees in those instances where prior notice could not be given.

But that was a result of a clear understanding, that we were trying to establish procedures for situations, that were going to be, by definition, so extraordinary as to defy attempts to predict the type of response that would be necessary.

We believed, that the consensus which had been achieved during the negotiations on the bill, about the value of informed House and Senate Intelligence Oversight Committees, would guarantee, that after-the-fact notifications, were made in the shortest time possible.

As a result, we did not feel it wise or necessary to delineate, in statute, the outer limits on the acceptable time for that type of notification.

Yes, there was an element of comity established in those negotiations, and yes, we thought it would endure.

That hope, unfortunately was one of the early victims of the Iran-Contra affair.

As a result, and because the importance of fully informed Intelligence Committees now should be even more clear, Congress must act to inject additional statutory certitude into the notification process.

The legislation we introduce today restates the requirement for prior written notice of covert activities to the Intelligence Committees, or in certain instances to a statutorily defined leadership group.

And it establishes a 48-hour period, as the maximum reasonable time, during which rare circumstances and the need for dispatch could combine to allow notice to be deferred.

The enactment of this measure, which I believe is fully consistent with the intent of the drafters of the Oversight Act of 1980, will strengthen the intelligence oversight process on both ends of Pennsylvania Avenue.

It is a bill that is in the best interest of Congress, the President, and the Nation, and I hope it will be brought to the floor as expeditiously as possible.

□ 1650

Mr. STOKES. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. BOLAND] for his excellent statement regarding this bill and am pleased to have him as a cosponsor of this legislation.

GENERAL LEAVE

Mr. STOKES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on this special order.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERMISSION TO EXTEND SPECIAL ORDER

Mr. OBEY. Mr. Speaker, I ask unanimous consent that I be allowed to extend the special order which I have reserved for this evening to 10 minutes, rather than 5.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

RESPONSE TO CONGRESSMAN McCOLLUM RE MILITARY ASSISTANCE TO EL SALVADOR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. OBEY] is recognized for 10 minutes.

Mr. OBEY. Mr. Speaker, earlier today, three Members of this House, the gentleman from Florida [Mr. MCCOLLUM], the gentleman from Texas [Mr. ARMEY], and the gentleman from Indiana [Mr. BURTON] attacked me for placing a hold on the administration's request for additional aircraft and other military assistance funds for the Government of El Salvador.

I would rise to a point a personal privilege because of their attack upon me except for the fact that I regard it as a personal privilege to be attacked by the three gentlemen in question.

Nonetheless, I would like to set the matter straight on the issues which they raised today.

Last year, at the end of November, the administration sent my subcommittee notifications that it intended to provide El Salvador with $8.6 million worth of fixed and rotary-wing aircraft and $6.5. million in military assistance funds for training and equipment of security forces.

Since the Congress was then out of session, and there was no way for the committee to take a close look at those requests, the committee put them on hold until this session could resume.

Since that time, a number of things have happened. First of all, a number of the members of my subcommittee, not just myself, asked that holds be put on the aircraft reprogramming. Also, since that time, the Hasenfus affair and the contragate scandal have raised a number of serious questions about the use of United States personnel and facilities in El Salvador.

There have been a number of allegations that American personnel in El Salvador, during a time when funding to the Contras was cut off, had facilitated the providing of supplies to the Contras.

Substantial questions have been raised, not only about United States personnel, paid for, I should point out, in the foreign assistance bill, facilitating the arms supply network to the Contras, but also questions have been raised about the involvement of El Salvadoran officials in facilitating those same shipments.

New reports have stated that the former CIA operatives running the arms supply operation from the Ilopango Airfield in El Salvador carried credentials issued from the El Salvadoran Armed Forces which identified those individuals as United States military advisers.

□ 1700

Gen. Juan Rafael Bustillo, the chief of the Salvadoran Air Force, also has been implicated in those stories in connection with the supply network going on.

Because of the serious allegations raised by the Iran-Contra scandal, the subcommittee sent the State Department on December 5 a list of 40 questions in order to determine whether or not any foreign assistance funds were used for any illegal purposes whatsoever in carrying out those activities.

One question was this: Did the State Department or the Defense Security Assistance Agency directly or indirectly have any role in the planning, purchasing, or delivery of arms provided to Iran or the Nicaraguan Contras? To date, the administration has only responded to 8 of those 40 questions. That may not bother the gentleman from Florida [Mr. MCCOLLUM.] with his longstanding love for the Contras, or the other gentleman who spoke today, but I have an obligation to make sure that the intention of Congress has not been circumvented by the administration. I am not asserting that it has been, but I do have an obligation to determine whether it has been or not.

When those Members addressed the request for police training earlier this afternoon, the impression was left that the administration does not have resources available to address its antiterrorist programs, including the problems of insurgency and terrorism.

I would like to point out that in fiscal year 1986 and fiscal year 1987 the administration has had $238 million in military aid and more than $850 million in economic and military aid in total for El Salvador.

The committee approved last year the full administration request for antiterrorism of $9.8 million, a 39-percent increase over the previous year's level when foreign aid had to be cut overall by 14 percent because of Gramm-Rudman.

The committee earmarked for the second year in a row $1 million specifically to assist the Government of El Salvador and its special investigative unit for the purpose of bringing to justice those responsible for the murders of United States citizens in El Salvador, including Corporal Kwiatkowski from my own district.

During the next month I will be talking with State Department offi-

100th Congress - first session

HR 1013 (center)

HOUSE OF REPRESENTATIVES

MR. STOKES (for himself), Mr. Boland, Mr. Beilenson, Mr. McCue, Mr. McCurdy, Mr. Daniel, Mr. Brown of California, Mr. Dwyer of NJ, Mrs. Kennelly, Mr. Kastenmeier, and Mr. Rowe) introduced the following bill:

which was referred to the Committee on _____.

A BILL

To strengthen the system of congressional oversight of the intelligence activities of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. Short title

This act may be cited as the "intelligence oversight amendment of 1987".

Sec. 1. WRITTEN FINDINGS

Section 662 of the Foreign Assistance Act of 1961 (22 USC 2422) is amended--

(1) by inserting "in writing," after "the President finds"; and

(2) by inserting ",and a copy of each such written finding shall be furnished, prior to the initiation of any such operation, to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, or as the case may be, to the Members of Congress referred to in section 501 (a)(1)(b) of the National Security Act of 1947 and to the Vice President of the United States, the Secretary of State, the Secretary of Defense, and the Director of Central Intelligence", before the period at the end thereof.

Section 3. DEFERRAL OF NOTICE

Section 501 of the National Security Act of 1947 (50 USC 413) is amended--

(1) In subsection (a), by striking "all applicable authorities and duties, including those conferred by the Constitution upon the Executive and Legislative branches of the government, and to the extent consistent with";

(2) By striking subsection (b);

(3) By redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d) respectively;

(4) In subsection (b), as so redesignated, by striking (subsections (a) and (b)" and inserting in lieu thereof "subsection (a)"; and

(5) By adding at the end the following new subsection:

"(e) only in extraordinary circumstances affecting the vital interests of the United States, and only where time is of the essence, the provision to the Congress of the notice of a significant anticipated intelligence activity may be deferred for not more than 48 hours after the initiation of such an activity or the signing of a finding pursuant to section 662 of the Foreign Assistance Act of 1961".